[*Caption*]

DECLARATION OF PEDRO H. RABASA

Pursuant to 28 U.S.C. § 1746, Pedro H. Rabasa declares as follows:

1. I am the Senior Manager of Foreign Exchange Reserves at Banco Central de la República Argentina ("BCRA"), the central bank of the Republic of Argentina (the "Republic" or "Argentina"). I have worked in the finance and economics divisions of banking institutions in Argentina and Canada for fifteen years. I began my employment at BCRA in December 2004 as the successor to Juan Basco in his capacity as manager of foreign exchange reserves. Mr. Basco has remained with BCRA as Senior Manager of Open Market Operations. I am fully familiar with the facts set forth in this Declaration.

* * *

A. The Republic Has Not "Appropriated" the Reserves of BCRA.

4. As set forth in the Basco Declaration, BCRA, as the central bank of the Republic, maintains and manages its international reserves as a fundamental part of monetary policy set and executed by it. BCRA is permitted by Argentine law to invest its international reserves only in specific types of assets. *See* Basco Decl. ¶ 10 (Exh. 1). These international reserves are property of BCRA used to carry out the central banking functions of BCRA, including regulatory activities (such as maintaining adequate reserves for the Argentine banking system) and

open market operations—purchases and sales of Argentine pesos and foreign exchange, including U.S. dollars—to stabilize the value of Argentina's currency.

5. BCRA's international reserves are held in international financial institutions, including the FRBNY, in BCRA's name and for its own account, not for the account of the Republic or any other third party. The international reserves are reflected on the balance sheets and financial statements of BCRA as assets of BCRA. *See* Organic Law of the BCRA, Law No. 24,144, art. 4 (Oct. 22, 1992, as amended) (attached hereto as Exh. 4, hereinafter, the "Charter"); Law No. 23,928/91, art. 5 (Mar. 28, 1991, as amended) (attached hereto as Exh. 5, hereinafter, the "Convertibility Law").[2] Neither Decree No. 1599, Decree No. 1601 (as defined in paragraph 10, *infra)* nor Law No. 26,076 has altered the ownership of these reserves in any way.

6. Like most central banks, part of BCRA's function is to act as a banker to its parent government by borrowing money from multilateral lending agencies like the 114?. Under its Charter, BCRA acts as the Republic's financial agent and as depositary and agent for the Republic before "international monetary, banking and financial entities, of which the Republic is a member," and is directed to enter into borrowing transactions with multilateral agencies (such as the IMF) on BCRA's behalf or on the Republic's behalf. *See* Charter, arts. 4(b), 17(d) (Exh. 4). Under these authorities, the IMP has periodically loaned BCRA funds totaling approximately USD

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[2] In seeking the attachment of BCRA's reserves at FRBNY, plaintiffs asserted that Law No. 26,076 amended the BCRA Charter, which is not true; Law No. 26,076 modified the Convertibility Law referred to above.

9.9 billion as of November 2005. *See* ME, *Argentina: Outstanding Purchases and Loans as of November 30, 2005* (attached hereto as Exh. 6). These borrowings are ultimately the Republic's debts *vis-a-vis* the IMF, but the actual borrower is BCRA, and they are recorded as liabilities on BCRA's balance sheet. *See, e.g.*, BCRA, *Financial Statement at 31.12.2004* (attached hereto as Exh. 7, hereinafter, the "Financial Statement").

7. The funds borrowed by BCRA from the IMF are for the purpose of providing financial support to the Republic, and are transferred by BCRA to the Republic for this purpose, typically in the form of an equivalent amount of Argentine pesos. The Republic always has undertaken to repay these amounts to BCRA. *See, e.g.*, Letter from Secretary of Treasury to President of BCRA (Mar. 3, 1993) (attached hereto as Exh. 8); Letter of Guillermo Nielsen and Jorge Sarghini to President of BCRA (Jan. 29, 2003) (attached hereto as Exh. 9). The Republic's obligation to repay these pesos is recorded as an asset on BCRA's balance sheet. *See* Financial Statement (Exh. 7). It is my understanding that this procedure of central bank borrowing from the IMF and transferring to the parent government is the method by which most states receive financing from the IMF.

8. BCRA always has used its reserves to pay principal and interest on its borrowing from the IMF, and the repayment of all outstanding indebtedness to the IMF (approximately USD 9.5 billion) that occurred on January 3, 2006 was no different in this respect. The January 3 repayment differed from earlier payments to the IMF only in the manner in which the Republic's corresponding obligation to reimburse BCRA has been handled.

9. Under the Convertibility Law prior to its amendment by Law No. 26,076, BCRA was required to use all of its reserves to back Argentina's monetary base.[3] Before Argentina's financial crisis at the end of 2001, Article 4 of the Convertibility Law required BCRA to maintain international reserves in an amount equal to at least 100% of the monetary base so as to maintain the fixed one-to-one exchange rate between the Argentine peso and U.S. dollar that then existed, and did not allow for any other use of any excess above the 100% of the monetary base. When the one-for-one peso/U.S. dollar exchange rate peg was abolished by Law No. 25,561/02 (Jan. 7, 2002), Article 4 was amended to require expressly that all BCRA reserves be used to back the monetary base. *See* Convertibility Law at 1 (Exh. 5). Under these provisions, whenever BCRA used its reserves to repay any portion of its IMP loans, the Republic was required contemporaneously to reimburse it with an offsetting repayment to BCRA in the equivalent amount of Argentine pesos; by removing these pesos from circulation, through this back-to-back payment, the backing of the Argentine monetary base would be unchanged by the reduction in BCRA's reserves for the IMF payment.

10. When, in the middle of 2005, the Republic's Executive Branch and BCRA began to discuss the repayment of the entire outstanding debt to the IMF, it was apparent that, due to the size of this payment, the procedure

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[3] As defined in the Convertibility Law, "[t]he monetary base in pesos is composed of the monetary circulation plus the demand deposits of the financial entities with the CENTRAL BANK OF THE REPUBLIC OF ARGENTINA, in checking accounts or special accounts." *See* Convertibility Law at 1 (Exh. 5); *see also* Exh. 2 at 2 (same).

described in Paragraph 9 above would have to be changed, since the Republic would not have the resources to reimburse BCRA immediately for the payment from BCRA's reserves.[4] As a result of these discussions, the Executive Branch issued Decree No. 1599, which amended the Convertibility Law to allow BCRA to use the portion of BCRA reserves in excess of 100% of the monetary base (the "freely available reserves") to satisfy its obligations to the IMF. *See* Decree No. 1599, arts. 5, 6 (Exh. 2). Soon thereafter, the Executive Branch issued Decree No. 1601/2005 (attached hereto as Exh. 10, hereinafter, "Decree No. 1601"), which implemented Decree No. 1599 by authorizing the repayment of the IMF debt in full through use of BCRA's freely available reserves. *See* Decree No. 1601, arts. 1, 2. Pursuant to procedures set forth under the Argentine Constitution, Decree No. 1599 was approved by both houses of the Argentine Congress on December 21, 2005, *see* Law No. 26,076 (Exh. 3), after a floor debate that included statements in support and in opposition to such approval. BCRA agreed to finance the Republic's corresponding repayment by taking an interest-bearing payment obligation from the Republic providing for a payment of principal to BCRA in ten years. *See* Resolution No. 49 (attached hereto as Exh. 11) and Resolution No. 4 (attached hereto as Exh. 12).

11. It is therefore completely erroneous for plaintiffs to suggest that the Republic has taken or appropriated BCRA's reserves to pay the IMF, or for any other pur-

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[4] Statements in the Argentine press to the effect that this repayment was somehow a surprise to BCRA are completely untrue. Officials of BCRA were involved in discussions with the Executive Branch in connection with this repayment for months before it was announced.

pose. BCRA's reserves remain BCRA's reserves, and are not property of the Republic or anyone else. Law No. 26,076 did not change this fact; in effect, it simply increased BCRA's capacity to make the early repayment of the IMF loan. BCRA's role in borrowing from the IMF for the Republic and repaying these borrowings from its reserves, both in earlier transactions and in the recent payment to the IMF, are traditional central banking activities, and in no way make BCRA's reserves property of the Republic.

B. The Attached Account at the FRBNY Consists of BCRA Reserves That Were Not Used in the Payment to the IMF.

12. BCRA maintains a single account at the FRBNY. The *ex parte* orders obtained by plaintiffs on December 30, 2005 have resulted in the freezing of approximately USD 105 million in this account.

13. None of these frozen funds were intended to be used, or were used, to pay the IMF. Rather, the payments for the IMF were made from other sources. The frozen funds have two sources and uses. First, a portion of them represent the deposits that Argentine banks are required by Argentine law and BCRA regulation to make into BCRA's FRBNY account sufficient to cover the banks' reserve requirements. *See* Charter, art. 18(h) (Exh. 4). Depending on the level of foreign exchange deposits in Argentine banks, their reserve requirements increase or decrease, resulting in continual payments into and out of this account. The receipt and investment of Argentine bank reserves is a traditional central banking function, which is essential to the supervision of the safety and soundness of the Argentine banking system.

14. The balance of the frozen funds are BCRA reserves used by BCRA in open market foreign exchange transactions necessary to implement monetary policy, which is part of BCRA's core function of regulating the Argentine banking system and financial sector. Like all central banks, BCRA buys and sells U.S. dollars against its local currency (in the case of BCRA, the Argentine peso) in order to inject liquidity, support the Argentine currency and stabilize its market value.

[*Excerpts from Exhibits 4 and 5 reprinted below. Other exhibits not reprinted.*]

EXHIBIT 4

Law 24.144
Central Bank of the Argentine Republic's Charter

CHAPTER I
- Role and Purpose -

Article 1—The Central Bank of the Argentine Republic (Banco Central de la República Argentina) ("BCRA") is a self-administered institution of the National State governed by the provisions of this act and other legal rules applicable.

* * *

[3]Article 4—BCRA shall perform the following duties:

* * *

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[3] L. 25 562, art 2°.

b) Act as a financial agent for the National State, and as depository and agent for the country before international monetary, banking and financial entities, of which the Nation is a member;

* * *

CHAPTER V
- BCRA's Transactions -

[11]Article 17—BCRA shall:

* * *

d) Enter into payment transactions derived from international agreements and borrow loans from foreign multilateral agencies and foreign instrumentalities, central banks or such entities of which the BCRA may solely be a borrower, on its behalf or on behalf of the National Treasury as the Argentine Republic's Financial Agent.

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[11] L 24.485, art 2°, D 1523/01, art. 1°; D. 1526/01, art. 1°, L. 25 562, art 6°

EXHIBIT 5

Law No. 23,928 of 03/27/91

CONVERTIBILITY OF THE AUSTRAL

Law No. 23,928

Passed: March 27, 1991

Promulgated: March 27, 1991

TITLE I

OF THE CONVERTIBILITY OF THE AUSTRAL

* * *

ARTICLE 6°—The assets that compose the reserves mentioned in the previous article constitute the common guarantee *(prenda común)* of the monetary base, they are not subject to attachment, and may be applied exclusively to the purposes contemplated under this law. The monetary base in pesos is composed of the monetary circulation plus the demand deposits of the financial entities with the CENTRAL BANK OF THE REPUBLIC OF ARGENTINA, in checking accounts or special accounts.

(Article substituted pursuant to art. 4° of Law No. 25,561 O.G. 1/7/2002).

* * *

[*Caption*]

SUPPLEMENTAL DECLARATION OF PEDRO H. RABASA

Pursuant to 28 U.S.C. § 1746, Pedro H. Rabasa declares as follows:

1. I am the Senior Manager of Foreign Exchange Reserves at Banco Central de la República Argentina ("BCRA"), the central bank of the Republic of Argentina (the "Republic" or "Argentina"). On January 6, 2006, I submitted a Declaration in support of BCRA's motion by order to show cause to vacate the *ex parte* orders of attachment and restraining notice entered in these actions (together, the "Orders").

2. I submit this Declaration (A) to provide the Court with further detail regarding the chronology of events resulting in the payment by BCRA of approximately USD 9.5 billion in outstanding indebtedness to the International Monetary Fund ("IMF") on January 3, 2006 from BCRA reserves located outside the United States, and (B) to address certain assertions made by plaintiffs in their memorandum in support of their motion to confirm the Orders and in opposition to BCRA's and the Republic's motions to vacate the Orders ("plaintiffs' memorandum"), which I have reviewed.

B. Chronology of Events.

3. On December 15, 2005, the President of the Republic, Néstor Kirchner, issued Decree of Necessity and Urgency No. 1599/2005 ("Decree No. 1599"), which amended the "Convertibility Law" to allow BCRA to use the portion of BCRA reserves in excess of 100% of the

monetary base (the "freely available reserves") to satisfy its obligations to the IMF. *(See* Exh. 2.)[1]

4. Also on December 15, 2005, the President issued Decree No. 1601/2005 ("Decree No. 1601"), which implemented Decree No. 1599 by authorizing repayment of the IMF debt in full through use of BCRA's freely available reserves. *(See* Exh. 10.)

5. On December 21, 2005, Decree No. 1599 was approved by both houses of the Argentine Congress and ratified as Law No. 26,076/05 ("Law No. 26,076"). *(See* Exh. 3.)

6. On December 29, 2005, the Ministry of Economy and Production issued Resolution No. 49, by which:

a. BCRA was authorized to repay debt to the IMF *(see* Exh. 11, art. 1.); and

b. The Secretariat of the Treasury and the Secretariat of Finance were instructed to compensate BCRA for the repayment to the IMF by issuing to BCRA an interest-bearing note with a principal value equal to the sum paid to the IMF. *(See* Exh. 11, arts. 2-3; Exh. 12.)

7. On December 29, 2005, the board of directors of BCRA at its weekly meeting adopted a resolution approving the repayment of the entirety of BCRA's obligations to the IMF.[2]

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[1] Unless otherwise specified, references to exhibits ("Exh.") in this Declaration are to exhibits attached to my Declaration dated January 6, 2006.

[2] BCRA is managed by a board of directors appointed by the National Executive Power with the consent of the Senate, with each director serving a six year term. *(See* Exh. 4 (Organic Law of the BCRA, Law No. 24,144, arts. 6-7 (Oct. 22, as amended); Exh. 1 (Declaration of Juan Basco, dated March 14, 2005) ¶ 5.)

8. I understand from counsel that the Honorable Barbara S. Jones of the United States District Court for the Southern District of New York signed the Orders at 12:05 p.m. EST on December 30, 2005.

9. Without notice or knowledge of the entry of the Orders, at 2:36 p.m. Argentine time (12:36 p.m. EST) on December 30, 2005, I personally supervised the transmission, through the SWIFT system,[3] of the orders to transfer a total of approximately USD 9.5 billion from various BCRA accounts, including a surplus account maintained by BCRA at the IMF, to the IMF's account in Washington, D.C. No accounts located in New York were used to make these payments settling BCRA's obligations to the IMF.

10. The Orders were served on the Republic's designated agent for service of process, Banco de la Nación, at 4:00 p.m. EST, 6:00 p.m. Argentine time, on December 30, 2005. Later that day, at about 8:00 p.m. Argentine time (6:00 p.m. EST), in a call from Federico Molina, the Financial Representative of the Republic in the United States, I personally learned that Banco de la Nación had received the Orders. During that call, which I received at my home, Mr. Molina told me that he had learned about the Orders from the Republic's counsel at about 5:00 p.m. EST. To my knowledge, I am the first BCRA official to have learned about the Orders. Accordingly, BCRA issued the directions for the payment to the IMF before Republic or BCRA received notice of the Orders.

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[3] "Swift," or the Society for Worldwide Interbank Financial Telecommunication, is a financial-industry-owned co-operative supplying standardized messaging services and interface software to 7,800 financial institutions in more than 200 countries.

11. I understand from reports from the institutions from which BCRA effected the payment to the IMF that those institutions made that payment at or about the opening of business in their respective countries on January 3, 2006 in the ordinary course of business and in accordance with the instructions sent by BCRA.

12. I reaffirm that none of the BCRA reserves frozen in its account at the FRBNY were intended to be used, or were used, to pay the IMF. Rather, the January 3 payment to the IMF was made from sources outside of the United States.

* * *

[*Caption*]

DECLARATION OF CARLOS GUSTAVO GERSCOVICH

Pursuant to 28 U.S.C. § 1746, Carlos Gustavo Gerscovich declares as follows:

1. I am an adjunct professor on the law faculty of University of Buenos Aires in Argentina. I also teach law at the University of Rio Grande del Sur, the University de Caxias del Sur and other universities in Brazil. I am a visiting professor and scholar in Finance and Development Law at the London Institute of International Banking, and an external evaluator for the London School of Economics and Political Science. I have authored some seventy articles and twelve books, including on banking law and on emergency legislation. I also practice law with the firm of Aguirre, Saravia & Gebhardt. I received my law degree at the University of Buenos Aires in 1965. I have practiced law for 40 years. From 1988 to 1991, I was the Legal Manager of the Banco Central de la República Argentina ("BCRA"), the central bank of the Republic of Argentina (the "Republic" or "Argentina"). A copy of my professional resume is attached as Exhibit A. I am fully familiar with the facts set forth in this Declaration.

2. I submit this Declaration to explain to the Court my opinion regarding the legal effect of Decree of Necessity and Urgency No. 1599/2005 of December 15, 2005 (hereinafter, "Decree No. 1599"), ratified by Law No. 26,076/05 (Dec. 21, 2005) (hereinafter, "Law No. 26,076"), and Decree No. 1601/2005 of December 15, 2005 (hereinafter, "Decree No. 1601").

3. Under Argentine law, neither Decree No. 1599, nor Degree No. 1601 nor Law No. 26,076 has altered the ownership of BCRA's reserves in any way. This conclusion is based on the following analysis:

4. The Organic Law of the BCRA (Law No. 24,144 of October 22, 1992 as amended) establishes in its Article 4(c), that the BCRA has as one of its functions to "concentrate and administer its reserves in gold, currency and other external assets"

5. The Convertibility Law (Law No 23,928 of March 28, 1991), which established a Currency Board, directed the BCRA to maintain reserves equal to 100% of the monetary base. (Articles 4, 5 and 6 of the Convertibility Law). Any amounts in excess of 100% of the monetary base were considered excess reserves. However, both categories clearly constituted reserves and nothing in this Law in any way altered the fact that these reserves are property of the BCRA as stated in the BCRA Organic Law. By its terms, the law recognized that it was the BCRA that had the responsibility for owning and administering the reserves.

6. When the Currency Board was discontinued in response to the financial crisis of 2001, Law No. 25,561 of January 7, 2002 modified Articles 4, 5 and 6 of the Convertibility Law to provide that all of the reserves owned by the BCRA should be designated to support the monetary base. Again, nothing in this Law purported to alter the BCRA's ownership of the reserves held by it pursuant to its Charter.

7. The most recent modifications to the Convertibility Law effected by Decree 1599, ratified by Law No. 26,076 of January 10, 2006 again modified Articles 4, 5 and 6 of the Convertibility Law to revert to previous dis-

tinctions, under the BCRA is to hold reserves equal to the monetary base, and any excess of its reserves over this amount could be used for central bank purposes in paying back loans from multinational lending agencies. Here again, nothing in these modifications alters the BCRA's ownership of its reserves. These modifications were simply designed to give the BCRA greater flexibility in the use of the reserves owned by it.

8. Resolution 49 of the Ministry of Economy and Production of December 12, 2005 documents the use, at the request of the Executive Branch, of a portion of the BCRA's reserves to repay obligations to the International Monetary Fund and contains the Ministry's commitment to provide the BCRA with an asset in compensation for the reserves paid over to the Fund, that is, a Draft of the Ministry reflecting the Ministry's obligation to pay an amount equal to the amount of the reserves utilized as described above. Nothing in this Resolution indicates in any way that the BCRA's ownership of its reserves is altered in any way. On the contrary, the Ministry's commitment to compensate the BCRA for the use of its reserves is a clear recognition that the reserves belong to the BCRA.

I declare under penalty of perjury under the laws of the United States of America that the described facts are true and correct and that the opinions reflect my criteria over those issues.

Dated: January 11, 2006
Buenos Aires, Argentina

/s/ CARLOS GUSTAVO GERSCOVICH
CARLOS GUSTAVO GERSCOVICH

DECLARATION OF HORACIO LIENDO

1. I am a Lawyer (1977) and Doctor of Law and Social Sciences, in both cases a graduate of the National University of Buenos Aires, I was a Director of the Central Bank of the Republic of Argentina (1991), Sub-secretary of Finance at the Ministry of Finance in charge of the negotiation of the Argentinean foreign debt (1991/1992) and Secretary of Legal, Technical, and Administrative Coordination of the Ministry of Economy and Public Works and Services of the Republic of Argentina (1992/1996). At the time, I designed and wrote the draft of what would later become the Convertibility Law 23.928, and I participated in the negotiation of the contract for the restructuring of the debt with private creditors under the Brady Plan.

2. I submit this declaration to inform the Court of my opinion on the latest amendments introduced in the Convertibility Law 23.928 by Decree 1599/05, ratified by Law 26.076 and its possible impact on said partial waiver of sovereign immunity.

3. The analysis will take into account the provisions of the United States Foreign Sovereign Immunities Act of 1997[1] which mandates that even though the reserves of the Central Bank are in principle non-attachable[2], this condition may be waived by the central banks or the respective states and, in case of a waiver or limitation to the non-attachable character of the reserves, such waiver or limitation may not be subsequently cancelled to reestablish the non-attachable character.[3]

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[1] Foreign Sovereign Immunities Act of 1977.

[2] See Section 1611(b)(1) of the United States Foreign Sovereign Immunities Act.

[3] Idem previous note.

4. In debt issue contracts prior to the default, the State waived sovereign immunity with certain exceptions, including that concerning the *free reserves* of the Central Bank backing up the monetary base according to the Convertibility Law, and which will be reflected as such in the balance sheet of the Central Bank.

5. The abandonment of the fixed convertibility ratio by Law 25.561 eliminated the distinction between the *free reserves* backing up the monetary base and those that exceeded such purpose. All *free reserves* backed up the monetary base, regardless of the magnitude of both.

6. Before the modification introduced by Decree 1599/05, the *reserves* of the Central Bank backing up the monetary base could be used only for this purpose. In other words, the Treasury could not use them to pay its obligations and the Central Bank could not use them for a purpose other than to back up the monetary base for which the reserves were a *common pledge.*

7. Decree 1599/05 introduced changes in Article 4, 5 and 6 of Law 23.928, which had been previously partially repealed and amended by Law 25.561.

8. After the amendment of Decree 1599/05, part of the reserves, even though they are called "free reserves," are NO longer *common pledge of the monetary base,* nor do they back it up and can be used to pay the public debt of the Treasury, even though the internal rule limits it to the debts to international agencies[4].

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[4] See last paragraph in Article 6 of Law 23.928 after its amendment by Decree 1599/05 which reads: Whenever the result is a neutral monetary effect, free reserves may be applied to the payment of obligations contracted with international financial entities."

9. The part of the *reserves* that continue backing up 100% of the monetary base and are its common pledge, are NOT qualified now as "freely available."

10. Decree 1599/05 uses the expression *"free reserves"* with a meaning different than that valid at the time of the execution of the debt issue contracts of the Treasury in the international market prior to the 2002 default.

11. Article 5 of Law 23.928, after being amended by Decree 1599/05, establishes that "The reserves which exceed the percentage established in Article 4[5], will be named free," although before that, the qualification "free" was used to describe which of the reserves of the Central Bank could be computed for the *backup of the monetary base,* since those reserves committed to a different purpose by the Central Bank were not *free* for monetary conversion operations, either at a fixed ratio (Articles 1, 2 and 3 of the original Law 23.928) or at a floating ratio (Law 25.561 and Decree 260/02).

12. In the debt issue contracts the Argentinean state did not waive the sovereign immunity of the *free reserves* with the scope described in the original language of the Convertibility Law.

13. However, that concept changed substantially after its amendment by Decree 1599/05 and now refers to the part of the *reserves* which do NOT back up the monetary base and therefore do not have any purpose relating them to the stabilization or preservation of the value of the currency.

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[5] 100% of the monetary base.

14. Decree 1599/05 requires as a condition to use the *free reserves* in their new meaning, that their use have "neutral monetary effect." which means that the monetary base must be backed up 100% with reserves of the Central Bank.

15. Although the Law does not say so expressly, there is no other way to make the aforementioned calculation but considering the "reserves" at their market value in pesos.

16. From a substantive viewpoint (as opposed to the literal expression) the reserves that exceed the ratio of 100% of the monetary base at market values may not be included in the exception to the waiver of sovereign immunity after the amendment of Decree 1599/05, since their allocation to the convertibility of the local currency was the public purpose for which the Argentinean state did not agree to waive its sovereignty in them, a purpose which the State itself now does not consider necessary[6].

17. On the other hand, if the main reason for which a special status is recognized for the *reserves* of the central banks is their function as stabilizer of the respective national economies, the Argentinean state has declared that part of them constitute a *surplus* over that purpose and that it can maintain the normal operation of its economy without them[7].

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[6] See in the same vein Financial Environment, Can they attach the reserves now?, page 1, edition of December 10, 2005.

[7] See Decree 1601/05, where, in the whereas paragraphs, one reads: "the balance of payments currently shows commercial and current account surpluses that assure the generation of foreign currency and the sustainability of the foreign accounts"; "that . . . we can see a situation of fiscal solvency that allows assuring the strength of the economy in possible

I declare under penalty of perjury under the laws of the United States of America that the facts described are true and that the opinions expressed reflect my position concerning these matters.

Executed on January 10, 2006 in Maldonado, Uruguay.

[signature]

HORACIO TOMAS LIENDO (h)

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unfavorable foreign scenarios"; and "that, in a floating exchange system, the current level of international reserves exceeds by far the margins necessary to maintain adequate monetary and exchange policies."

[LETTERHEAD OF FEDERAL RESERVE
BANK OF NEW YORK]

January 12, 2006

BY HAND

Hon. Thomas P. Griesa
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1630
New York, NY 10007-1312

Re: EM Ltd. v. The Republic of Argentina, Docket No. 03 CV 2507 (TPG)

NML Capital, Ltd. v. The Republic of Argentina, Docket Nos. 03 CV 8845 (TPG), 05 CV 2434 (TPG)

Dear Judge Griesa:

I represent the Federal Reserve Bank of New York ("FRBNY"), which is a garnishee in the above-referenced matters. I write regarding the pending motion by the Republic of Argentina to vacate the restraining notices and orders of attachment that have frozen a balance in the accounts of the Banco Central de la Republica Argentina here at the FRBNY.

The instant motion raises significant issues regarding the immunity of foreign central bank accounts in the United States. The FRBNY thus offers the enclosed Declaration of Thomas C. Baxter, Jr. to assist the Court in its deliberations.

Should the Court require additional information, I may be reached at (212) 720-2502.

Respectfully submitted,

/s/ BARRY SCHINDLER
Barry M. Schindler (BS 8391)
Counsel and Assistant Vice President

Enclosure

cc: Jonathan I. Blackman,
Attorney for Defendant
Joseph E. Neuhaus,
Attorney for Banco Central de la República Argentina
Robert A. Cohen,
Attorney for Plaintiff NML Capital, Ltd
Dennis H. Hranitzky,
Attorney for Plaintiff EM Ltd.

[*Caption*]

DECLARATION OF THOMAS C. BAXTER. JR.

Pursuant to 28 U.S.C. § 1746, Thomas C. Baxter, Jr. declares as follows:

1. I am General Counsel and Executive Vice President of the Federal Reserve Bank of New York ("FRBNY"). I have held this position since March 1995. The FRBNY is one of twelve regional Federal Reserve Banks, which, along with the Board of Governors of the Federal Reserve System and the Federal Open Market Committee, comprise the Federal Reserve System, the central bank of the United States.

2. I make this declaration to assist the Court in assessing whether the balance in the accounts that has been restrained in the instant case should be subject to attachment or execution.

3. Among its many functions, the FRBNY serves as the international operating arm of the Federal Reserve System. As such, the FRBNY conducts foreign exchange operations, maintains accounts at foreign central banks, and holds on its books the accounts of more than one hundred central banks and monetary authorities around the world.

4. The FRBNY holds accounts on its books for the Banco Central de la República Argentina ("BCRA"), which is the central bank of the Republic of Argentina. The BCRA has had an account relationship with the FRBNY since 1935.

5. Central banks generally perform a variety of functions on behalf of the sovereign.

These central banking functions include some or all of the following:

(a) issuance of notes, coin, and legal tender;

(b) custody and administration of the nation's monetary reserves through the holding of gold, silver, domestic and foreign securities, foreign exchange, acceptances and other credit instruments, and International Monetary Fund Special Drawing Rights;

(c) establishment and maintenance of reserves of depository institutions;

(d) discounts and advances to depository institutions;

(e) receipts of deposits from the government, international organizations, depository institutions, and, in special cases, private persons;

(f) open market operations;

(g) implementing foreign exchange policy;

(h) representing the sovereign in dealings with other central banks and international monetary organizations;

(i) credit controls; and

(j) licensing, supervision, and inspection of banks.

6. In large part because of the safety and stability of the dollar and the United States' financial, political and judicial systems, many countries maintain part of their exchange reserves in dollar-denominated assets in the United States. Under home country law, these reserves are sometimes assets of the national government. Nonetheless, when reserves are held outside of the home country, they are typically held in an account owned and controlled by the country's central bank. Maintaining

and managing these reserves is a typical central bank function.

7. There are accounts on the FRBNY's books that are denominated as "Central Bank of X, acting as Fiscal Agent for the Republic of X." We style these fiscal agency accounts in this way for a specific purpose—the style reveals that the central bank holds legal title to and has sole control over such an account, but the government is the beneficial owner of the property interest that is represented by a positive balance in such an account. The BCRA does not maintain an account at the FRBNY that is styled in the "fiscal agency" manner. Consequently, from our perspective, the balance in the BCRA's accounts is the property of the BCRA and not the Republic of Argentina.

Dated: January 12, 2006
New York, New York

/s/ THOMAS C. BAXTER, JR.
Thomas C. Baxter, Jr. (TB 9351)